FIDUCIARY ALERT – APRIL 2005
Trustees, Legal counsel and CPAs regarding Over concentration of trust assets in

Real estate & Bonds

- ❖ Trustees are required to be prudent – exercise care, skill, loyalty, act impartially and with caution.
- ❖ Absent specific instructions in the trust, trustees are also required to diversify trust assets such that there is a balance between current income and future growth keeping in mind present and future needs of beneficiaries.

Lessons from the past…

The stock market bubble, especially the tech bubble of which many investors and too many trustees became enamored of in the late 90's should be a healthy reminder that markets do not simply grow straight up…unabated appreciation in bonds, fixed income securities and commercial and residential real estate places heavier burdens on trustees to more closely monitor the composition of assets in light of beneficiaries' goals and needs. It is often useful to evaluate these needs in both absolute as well as relative terms.

The case for Fiduciary Intelligence "FI"

A checklist may provide the trustee with support for the decision-making process of investing and managing trust assets and property. This checklist should be reviewed with legal and tax counsel at least annually; regardless of whether or not circumstances have "changed". Common concerns may include:

- What if any, are the specific investment instructions in the trust? [California adopted the Uniform Prudent Investor Act in 1996 and is the default standard for trustees of private trusts, and most non-profits, foundations and endowments.]
- What kind of capital preservation, growth and distribution polices were envisioned by the settlor? Are these attitudes shared by today's trustees and beneficiaries?
- Does trustee have a process of communication with beneficiaries regarding trust performance and/or holdings? Does trustee ask beneficiaries to "close the loop"?
- Is trustee aware of specific and general investment fiduciary duties?
- Has counsel documented discussions with trustee regarding the fiduciary standard of care applicable to the trust?
- Trustees are fast becoming the focal point of disgruntled beneficiaries. Values of most real property, bonds and other fixed income securities have risen dramatically. These asset classes are fueled primarily by 40 year record-low interest rates and the widespread use of leverage.
- ***Today's trustees are squarely confronted with a number of critical decisions for which we believe they could be better equipped.***

- If response to the above yields a less-than-comfortable feeling contact us for an independent review of fiduciary compliance*.
- ➢ ***CHRIS MCCONNELL & ASSOCIATES works in cooperation with legal counsel & CPAs and has developed a variety of tools to educate and assist trustees to understand and comply with applicable fiduciary standards of care. In most situations the majority of fiduciary compliance is controllable.***

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